IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4249 OF 2007
WITH
CIVIL APPLICATION NO. 1396 OF 2007

Generosa A. Annes ..Petitioner
Vs.
Haji Esmail Haji Essa
Supariwala and ors. ..Respondents

Mr. Anthony T. Marques for petitioner.
Mr. S.G. Gupta with Mr.M.A. Rochiramani i/by Rochi and Rochi for respnodent no.1.

CORAM: B.H. MARLAPALLE, J.

Date : June 28, 2007.

P.C.:

1. Heard Mr. Marques the learned counsel for the petitioner. The petitioner has filed RAD Suit No. 811 of 2003 for declaration and permanent injunction claiming that she is in possession and occupation of the suit premises in Supariwala Mansion (previously known as Pervis Mansion and Safiya Mansion), Dr.Babasaheb Ambedkar Road, Parel, Bombay 400 012 and in the said suit she filed Interim Notice No. 1599 of 2003 praying for interim injunction. The learned Judge of the Small Causes Court was pleased to allow the said notice partly and as per his order dated

29/9/2003 the notice has been made absolute in terms of prayer clauses (b) to (e). The said prayer clauses read as under:-

> (b) That pending hearing and final disposal of the suit, the Hon'ble Court, by an order and injunction, be pleased to restrain the Defendant No.1 and/or his agents, servants, contractors, developers, or any persons claiming through him from pulling down or demolishing the present building and/or the suit premises, i.e. the Shops Nos.1,2 and 3 and a Store Room under the staircase, in the building, known as Supariwala Mansion (previously known as Pervis Mansion and Safiya Mansion), Dr. Babasaheb Ambedkar Road, Parel, Bombay - 400 012, bearing C.S. No. 20/26 of Dadar Naigaon Division, Dadar, Bombay - 400 012 alongwith a C.I. Shed alongside Shop No.1 and 2 on East Compulsory Open space, without first executing due and appropriate agreement with Plaintiff for providing her alternate accommodation in the reconstructed building in lieu of the suit premises.
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> (c) That pending hearing and final disposal of the suit, the Hon'ble court, by an order and injunction, be pleased to restrain the Defendant No.1 from dealing in any manner whatsoever with the Defendant No.2 singly or at the back or in the absence of the plaintiff and without plaintiff's consent in respect of the suit premises i.e. the Shops Nos.1, 2 and 3, and a Store Room under the staircase, in the building, known as Supariwala Mansion (previously known as Pervis Mansion and Safiya Mansion), Dr. Babasaheb Ambedkar Road, Parel, Bombay - 400 012, bearing C.S.No. 20/26 of Dadar Naigaon Division, Dadar, Bombay - 400 012 alongwith a C.I. Shed alongside Shop No.

1 and 2 on East Compulsory Open space or any part thereof or accepting from the Defendant No.2 the surrender of the suit premises or any part thereof or transferring or permitting the transfer of the suit premises or any part thereof to any third person or party.

(d) That pending hearing and final disposal of the suit, the Hon'ble Court, by an order and injunction, be pleased to restrain the Defendant No.2 from dealing in any manner whatsoever with the Defendant No.1, on her own or at the back or in the absence of the Plaintiff and without plaintiff's consent in respect of the suit premises i.e. the Shops Nos.1,2 and 3 and a Store Room under the staircase, in the building, known as Supariwala Mansion (previously known as Pervis Mansion and Safiya Mansion) Dr. Babasaheb Ambedkar Road, Parel, Bombay - 400 012, bearing C.S. No. 20/26 of Dadar Naigaon Division, Dadar, Bombay - 400 012 alongwith a C.I. Shed alongside Shop No.1 and 2 on East Compulsory Open space or any part thereof or from surrendering the suit premises or any part thereof to the Defendant No.1 or causing transfer of the suit premises or any part thereof to any third person or party.

(e) That pending hearing and final disposal of the suit, the Hon'ble Court, by an order and injunction, be pleased to restrain the Defendant No.1 from bifurcating the Rent Receipt (that stands in the joint names of Plaintiff's husband, late Mr.Archibald Annes and the Defendant No.2) of the suit premises, i.e. the Shops Nos.1,2 and 3, and a Store Room under the staircase, in the building, known as Supariwala Mansion (previously known as Pervis Mansion and Safiya Mansion), Dr. Babasaheb Ambedkar Road, Parel, Bombay - 400 012, bearing C.S. No.20/26 of Dadar Naigaon Division, Dadar, Bombay - 400 012 alongwith a C.I. Shed alongside Shop No.1 and 2 on East Compulsory Open space and/or issuing separate

or different Rent Receipts for different parts/shops of the suit premises or either of the two names.

2. Being aggrieved by the said order passed by the trial court, the defendants approached the Division Bench of the Small Causes Court in Appeal No. 116 of 2005 and the appeal has been allowed by Judgment and Order dated 5/5/2007 and the said order is impugned in this petition filed under Article 227 of the Constitution.

3. The Lower Appellate Court observed that the apprehension of the plaintiff did not exist more so in view of the order passed by the Division Bench of this court on 27/2/2007 in Writ Petition No.1850 of 2006 (Original Side). In the impugned order, it is noted that the plaintiff’s interests have been duly protected and even prayer clause (a) which is the main and substantial prayer in the plaint has been taken care of.

4. There is no dispute that Writ Petition No.1850 of 2006 was filed by the present petitioner and the Division Bench of this Court referred to the affidavit

in reply filed by the respondent no.1 as well as respondent no.3 the owner who was proposing to develop the building in question. The owner's undertaking is recorded in the following words:-

> "...The Respondent No.3 owner who proposes to develop the building in question has also filed his Affidavit dated 23.1.2007 in which it has been categorically stated in para 9, that he is ready to hand over Shop No.1 (rear portion) together with Shop No.2 together with shed as one unit being Shop No.2 in redeveloped building having same area to the Petitioner through Court Receiver after its reconstruction. It has been further stated, that, as regards the other premises namely Shop No.1 (front portion), Shop No.3 and store room under staircase, he is ready to hand over possession of alternative premises in the redeveloped building in lieu of the same, to such person as may found to be entitled thereto by the Small Causes Court at Bombay before whom the dispute relating to the

> tenancy of the said premises is pending, as to the knowledge of the Petitioner the same are already transferred in the name of new tenants with whom they have entered into agreements of alternative accommodation in the new building in lieu of their tenancies in the suit building."

. The Division Bench further observed, based on this undertaking, as under:-

> "....This sufficiently protects the interest of the Petitioner. In our view, restraining the Respondent No.3 from carrying out redevelopment of the dilapidated building which is in dangerous condition is not in public interest, leave aside, the claim of the Petitioner which is yet to be determined. Therefore, this court is not inclined to issue any Writ of Mandamus against Respondent Nos.1 and 2".

5. The Division Bench of the Lower Appellate Court, on perusal of the order passed by the Division Bench of this Court and as referred to hereinabove, held that when the tenancy rights of the plaintiff are to be determined in the pending suit, granting injunction as prayed for in terms of prayer clauses (b) to (e) would definitely cause undue hardship to the other tenants and occupants in the suit building and ultimately to the Defendant Nos.1 and 2. It further observed that by refusing to grant temporary injunction as sought for, the claim of the tenancy rights of the plaintiff is not going to defeat the rights of the plaintiff and, therefore, the impugned order of the trial court was rightly set aside by the Lower Appellate Court. This view taken by the Lower Appellate Court, by referring to the order passed by the Division Bench of this Court in Writ Petition No.1850 of 2006, cannot be termed as perverse or grossly erroneous so as to call for interference under Article 227 of the Constitution. The parties are bound by the order passed by this court in Writ Petition No. 1850 of 2006 and the petitioner’s interests have been sufficiently protected in terms of

the undertaking as noted in the said order. If the order passed by the trial court allowing the Interim Notice No.1599 of 2003 was allowed to be continued, the order passed by this court would be inoperative. The Lower Appellate Court, therefore, rightly stepped in and set aside the order passed by the trial court. I have also taken note of the Court Receiver's report dated 16/6/2007 that he has handed over the vacant possession of Shop No.2, rear portion of Shop No.1 and shed to the present petitioner along with two sets of five keys of the said property. The petitioner has furnished an undertaking on a stamp paper of Rs.200/- to the office of the Court Receiver for indemnity and has also furnished the possession receipt.

6. Hence, the petition is rejected summarily. Civil Application No. 1396 of 2007 does not survive and the same shall stand disposed as such.

7. The learned counsel for the petitioner, at this stage, made an oral application for stay to this order.

. The prayer is hereby rejected as the order of the Division Bench in Writ Petition No. 1850 of 2006 prevails as of now.

(B.H. Marlapalle,J.)